

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL CARLOS GARCIA,

Plaintiff,

v.

CITY OF SACRAMENTO, et al.,

Defendants.

No. 2:21-cv-36-KJM-KJN PS

FINDINGS AND RECOMMENDATIONS

(ECF Nos. 9, 13.)

Plaintiff, proceeding without counsel in this action, alleges multiple causes of action against the City and County of Sacramento and individual law-enforcement officers of those entities. (ECF No. 1.) Plaintiff's claims center on the conduct of officers during his 2009 arrest and detention related to the murder of a Riverside County man. Currently before the court is a motion to dismiss from Sacramento County and former Sheriff McGinnis, which was joined in relevant part by the City of Sacramento and the named officers thereof.¹ (ECF Nos. 9, 13.) Plaintiff generally opposes dismissal. (ECF No. 15.)

The undersigned recommends: (A) all claims against defendant McGinnis be dismissed with prejudice; (B) claims I, II, VII, VIII, IX, X, and XII be dismissed without prejudice as Heck barred; and (C) claims III, IV, V, VI, and XI be dismissed with prejudice as time-barred.

¹ This motion was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21) for the issuance of findings and recommendations. See Local Rule 304.

Background²

According to the complaint, in March of 2009, plaintiff was arrested by detectives from the Sacramento City Police Department pursuant to an out-of-county arrest warrant issued in a Riverside County criminal case. (ECF No. 1 at ¶ 1-2.) Three city detectives allegedly entered a third party's private residence without a warrant, searched the premises, arrested plaintiff, interrogated him without notifying him of his Miranda rights, and seized personal property. (Id. at ¶¶ 181-85 and 191-96.) After being booked at the Sacramento County jail, these detectives and unnamed county jail officers allegedly rebuffed plaintiff's attempts to contact his attorney. (Id. at ¶¶ 203-04.) The detectives and county jail officers allegedly failed to present him with the arrest warrant, to inform him of the charges or amount of bail, to post bail, or to present him to the court within 48 hours of arrest. Instead, plaintiff was allegedly held in solitary confinement for seven days before being transported to Riverside County. (Id. at ¶¶ 212-14 and 223-26.) Plaintiff maintains the personal property has not been returned to him; instead, two city officers transferred the property to the Palm Springs Police Department. (Id. at ¶¶ 230-34.) Plaintiff also maintains the city detectives never disclosed certain details related to their seizure of certain physical evidence. (Id. at ¶¶ 241-45.)

Plaintiff was charged with murder, and in 2012 was convicted and sentenced to life in prison without parole. (Id. at ¶ 7.) Plaintiff's conviction was overturned in June of 2020 by writ of habeas corpus, based on a claim of judicial bias concerning one of plaintiff's co-defendants in the murder case. (See ECF No. 11-1.) Plaintiff was immediately detained pursuant to an amended information and held over for retrial. (See Id. at 11-2 and -3.)

² Facts from the complaint are construed in the light most favorable to plaintiff—the non-moving party. Faulkner v. ADT Sec. Servs., 706 F.3d 1017, 1019 (9th Cir. 2013). However, conclusory assertions from the complaint are omitted, as they cannot be relied upon to overcome a motion to dismiss for failure to state a claim. Paulsen v. CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009) (In deciding a motion to dismiss for failure to state a claim, the court need not rely on “legal conclusions merely because they are cast in the form of factual allegations.”).

Further, defendants note the renewed underlying criminal proceedings against plaintiff, and the court notes the docket for these proceedings. (See ECF Nos. 11 and 12.) The court finds these public records not subject to reasonable dispute, and so takes notice thereof. Fed. R. Evid. 201; Harris v. County of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012) (judicial notice may be taken of “undisputed matters of public record . . . , including documents on file in federal or state courts”).

Plaintiff filed suit in this court on January 7, 2021, alleging the following claims:

- I. Section 1983 claim for denial of counsel and interrogation without being Mirandized, Fifth and Sixth Amendments;
- II. Section 1983 claim for warrantless search, Fourth Amendment;
- III. Cal. Civ. Code § 52.1 claim for denial of counsel;
- IV. Cal. Civ. Code § 52.1 claim for denial of bail hearing;
- V. Cal. Civ. Code § 52.1 claim for delay in arraignment;
- VI. State Tort Claim for Conversion/"Trespass to Personal Property";
- VII. Section 1983 claim for failure to disclose evidence, Fourteenth Amendment;
- VIII. Section 1985 claim for "conspiracy to violate civil rights";
- IX. Section 1983 Monell claim for failure to train/supervise/discipline officers;
- X. Section 1983 "supervisory liability" claim;
- XI. Cal. Gov. Code § 815.2 claim for respondeat superior/vicarious liability; and
- XII. A "claim" for injunctive and declaratory relief.

(Id. at ¶¶ 175-281.) Plaintiff names Detectives Steve Hansen, Richard Hitchcock, and Steve Glen as the detectives who effectuated his arrest in 2009; Officers A. Richardson and D. Poirier as the two officers in control of the seized property; and various City and County Doe officers who were additionally responsible for the various alleged acts. (Id. at ¶¶ 20-24, 26.) Plaintiff also names multiple chiefs of police and county sheriffs, as well as the City and County of Sacramento, as related to the Monell and failure to train claims. (Id. at ¶¶ 15-19, 25.)

Defendants Sacramento County and former Sheriff McGinnis ("County Defendants") filed a motion to dismiss in April 2021, arguing: (a) certain claims are barred by the relevant statute of limitations; (b) the court should apply Younger abstention to certain claims, given plaintiff's retrial; (c) plaintiff's state-law claims are barred for failure to comply with the California Tort Claims Act; and (d) the complaint fails to allege plausible facts against Sheriff McGinnis under Section 1983 or the Bane Act. (See ECF No. 9.) The remaining officers and City of Sacramento ("City Defendants") joined the County's motion to dismiss in relevant part. (ECF No. 13.) In his opposition, plaintiff consented to dismissal of all claims against Sheriff McGinnis, clarified that only claims 3-5 and 9-12 applied to the County Defendants, and otherwise generally opposed dismissal. (ECF No. 15.) The County Defendants replied. (ECF No. 16.)

Given the ongoing criminal proceedings and for judicial efficiency, the undersigned stayed this case. (ECF No. 17.) Plaintiff was again convicted in late 2023. (See Ex. 1 to this order (Riverside County criminal docket, Case No. INF064492).)

1 **Legal Standards - Motion to Dismiss**

2 A claim may be dismissed because of the plaintiff's "failure to state a claim upon which
3 relief can be granted." Rule 12(b)(6).³ To avoid dismissal for failure to state a claim, a complaint
4 must contain more than "naked assertions," "labels and conclusions," or "a formulaic recitation of
5 the elements of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007).
6 Thus, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to
7 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A claim has
8 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged." Id.

10 When considering whether a complaint states a claim upon which relief can be granted,
11 the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94
12 (2007), and construe the complaint in the light most favorable to the plaintiff. See Papasan v.
13 Allain, 478 U.S. 265, 283 (1986). The court is not, however, required to accept as true
14 "conclusory [factual] allegations that are contradicted by documents referred to in the complaint,"
15 or "legal conclusions merely because they are cast in the form of factual allegations." Paulsen v.
16 CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). The court inform plaintiff of deficiencies in the
17 complaint and provide an opportunity to cure—if it appears at all possible that the plaintiff can
18 correct the defect. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

19 In ruling on a motion to dismiss filed pursuant to Rule 12(b)(6), the court may "generally
20 consider only allegations contained in the pleadings, exhibits attached to the complaint, and
21 matters properly subject to judicial notice." Outdoor Media Group, Inc. v. City of Beaumont, 506
22 F.3d 895, 899 (9th Cir. 2007). Although the court may not consider a memorandum in opposition
23 to a defendant's motion to dismiss to determine the propriety of a Rule 12(b)(6) motion, see
24 Schneider v. Cal. Dep't of Corrections, 151 F.3d 1194, 1197 n. 1 (9th Cir. 1998), it may consider
25 allegations raised in opposition papers in deciding whether to grant leave to amend. See, e.g.,
26 Broam v. Bogan, 320 F.3d 1023, 1026 n. 2 (9th Cir. 2003).

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28 ³ Citation to the "Rule(s)" are to the Federal Rules of Civil Procedure, unless otherwise noted.

1 **Analysis**

2 **A. Consent to Sheriff McGinnis's Motion to Dismiss**

3 In the complaint, Claims III, IV, and V (for alleged denial of counsel, denial of bail, and
4 delay in arraignment under the California Bane Act), and, liberally construed, Claim XII (for
5 injunctive and declaratory relief) were alleged against former Sacramento County Sheriff
6 McGinnis. (See ECF No. 1.) McGinnis moved to dismiss with prejudice all claims against him,
7 and plaintiff agreed in his opposition that McGinnis "should be dismissed from the action and
8 consents to that disposition as to him only." (ECF No. 15 at 2.) McGinnis replies that because of
9 this concession, the court should dismiss McGinnis with prejudice. (ECF No. 16. at 2-3.) Under
10 Rule 41(a), voluntary dismissals without a court order are generally without prejudice, unless
11 stated otherwise. See Fed. R. Civ. P. 41(a)(1)(B). Thus, because plaintiff consented to defendant
12 McGinnis's motion to dismiss all claims with prejudice, the court finds this to be the proper
13 resolution and so recommends.

14 **B. Heck v Humphrey and Statute of Limitations for Federal Claims**

15 Section 1983 authorizes civil actions for the "deprivation of any rights . . . secured by the
16 Constitution and laws" against a party acting under color of state law. 42 U.S.C. § 1983.
17 California's Bane Act performs a similar function for both federal and California state law. Cal.
18 Gov. Code § 52.1. Sections 1983 and 1985 contain no statute of limitations, so federal courts in
19 California typically apply the state's "statute of limitations for personal injury actions, along with
20 the forum state's law regarding tolling." Canatella v. Van De Kamp, 486 F.3d 1128, 1132 (9th
21 Cir. 2007); see also McDougal v. County of Imperial, 942 F.2d 668, 673-74 (9th Cir. 1991)
22 (holding that Section 1985 claims should be governed by the same statute of limitations as 1983
23 claims). In California, the limitations period for personal-injury styled claims under these statutes
24 is two years. Cal. Civ. Pro. § 335.1; Maldonado v. Harris, 370 F.3d 945, 954 (9th Cir. 2004)
25 (applicable statute of limitations for Section 1983 actions is drawn from forums state's limitations
26 period for personal injury actions; in California, a two-year limitations period was made effective
27 as of January 1, 2003).

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1 However, certain claims under Section 1983 do not accrue, for statute of limitations
2 purposes, while an underlying conviction or sentence is in effect. Heck v. Humphrey, 512 U.S.
3 477, 489-90 (1994) (“[A Section] 1983 cause of action for damages attributable to an
4 unconstitutional conviction or sentence does not accrue until the conviction or sentence has been
5 invalidated.”). “[W]hen the plaintiff has a complete and present cause of action [is] when the
6 plaintiff can file suit and obtain relief.” Wallace v. Kato, 549 U.S. 384, 388 (2007) (noting the
7 accrual date of a Section 1983 cause of action is a question of federal law); see also Bagley v.
8 CMC Real Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991) (“A federal claim accrues when the
9 plaintiff knows or has reason to know of the injury which is the basis of the action.”) (cleaned
10 up). Thus, dismissal without prejudice for unaccrued claims is proper so the plaintiff/criminal-
11 defendant “may reassert his claims if he ever succeeds in invalidating his conviction.” Trimble v.
12 City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995). Conversely, “if the district court
13 determines that the plaintiff’s action, even if successful, will not demonstrate the invalidity of any
14 outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in
15 the absence of some other bar to the suit.” Heck, 512 U.S. at 487.

16 Here, given the assertions in the complaint, plaintiff’s federal claims have yet to accrue, as
17 success on the merits of these claims could “demonstrate the invalidity of any outstanding
18 criminal judgment.” Heck, 512 U.S. at 487. This includes Claim I (Section 1983 claim for
19 officer’s failure to read Miranda warning prior to custodial interrogation and failure to provide
20 counsel during interrogation and during pretrial proceedings, Fifth and Sixth Amendments);
21 Claim II (Section 1983 claim for warrantless search under the Fourth Amendment); Claim VII
22 (Section 1983 due process claim under the Fourteenth Amendment for failure to disclose
23 evidence); and Claim VIII (Section 1985 claim for “conspiracy to violate civil rights”). See
24 Trimble v. City of Santa Rosa, 49 F.3d 583, 584-85 (9th Cir. 1995) (per curiam) (finding Fifth
25 Amendment claim alleging officer’s failure to read Miranda warnings barred by Heck); Szajer v.
26 City of Los Angeles, 632 F.3d 607, 611-12 (9th Cir. 2011) (concluding Fourth Amendment
27 unlawful search claim Heck barred because a finding that there was no probable cause for the
28 search would necessarily imply the invalidity of plaintiffs’ conviction for felony possession of a

pistol); Bradford v. Scherschligt, 803 F.3d 382 (9th Cir. 2015) (finding due process claim related to evidence tampering had yet to accrue, despite overturning of plaintiff’s conviction, where plaintiff was retried for the same crime and the state could have used the same evidence against the plaintiff); McQuillion v. Schwarzenegger, 369 F.3d 1091, 1098 (9th Cir. 2004) (holding that “Heck applies equally” to claims brought under Section 1985); see also, e.g., Trice v. Modesto City Police Dep’t, 2009 WL 102712, at *4 (E.D. Cal. Jan. 14, 2009) (finding violations of the plaintiff’s right to counsel, if made out, would necessarily bear upon the invalidity of his conviction and thus are barred by Heck). Further, any Monell or “supervisory liability” claims (Claims IX and X) based on the above individual civil rights claims also should be dismissed without prejudice.⁴ Johnson v. City of Seattle, 474 F.3d 634, 638-40 (9th Cir. 2007) (reminding that Monell claims require “an underlying constitutional tort”).

Finally, regarding plaintiff’s Claim XII for declaratory and injunctive relief, this “claim” is better construed as a request for remedies under other claims. See, e.g., Henry v. Gerber Prod. Co., 2016 WL 1589900, at *4 (D. Or. Apr. 18, 2016) (“[A]n injunction is a type of relief, not a separate cause of action.”); Curtis v. Option One Mortg. Corp., 2010 WL 1729770, at *8 (E.D. Cal. Apr. 28, 2010) (“Under Federal law, an injunction is a remedy to another claim or cause of action and not a claim or cause of action in and of itself.”). Given plaintiff could theoretically request these kinds of relief under any reasserted, post-Heck bar federal claims, the court recommends dismissal of Claim XII without prejudice.

Thus, the court recommends dismissal without prejudice of Claims I, II, VII, VII, IX, X, and XII. Trimble, 49 F.3d at 585.

⁴ Plaintiff’s Claim X for “supervisory liability” under Section 1983 is defunct, as this kind of claim is barred by law. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (“Liability under [§] 1983 arises only upon a showing of personal participation by the defendant. A supervisor is only liable for the constitutional violations of . . . subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them. There is no respondeat superior liability under [§] 1983.”). However, given that the court recommends plaintiff’s Monell claim (Claim IX) should be dismissed without prejudice pursuant to Heck, a similar disposition is recommended here for Claim X. This is because, liberally construed, certain portions of Claim X could be cognizable under a Monell theory—should plaintiff overcome the Heck bar.

C. Compliance with California Tort Claims Act

Plaintiff's remaining claims arise under state law and are dismissible for a separate reason: failure to comply with California's Tort Claims Act. See Cal. Gov. Code § 945.4. To comply, a plaintiff must present the civil claims for money damages to the public entity prior to filing suit. S.M. v. L.A. Unified Sch. Dist., 184 Cal. App. 4th 712, 717 (2010). "[C]ompliance with the claims statutes is mandatory; and failure to file a claim is fatal to the cause of action." Hacienda La Puente Unified School Dist. v. Honig, 976 F.2d 487, 494 (9th Cir. 1992); see also State of California v. Superior Court, 32 Cal.4th 1234, 1240–44 (2004).

Nowhere in the complaint is it alleged plaintiff presented any of his state law claims to the City or County prior to filing suit. Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995) ("Where compliance with the Tort Claims Act is required, the plaintiff must allege compliance or circumstances excusing compliance, or the complaint is subject to [dismissal]"). Plaintiff contends in opposition that he did, in fact, submit these claims to the City and County. (ECF No. 15.) However, the court notes that in plaintiff's request for judicial notice, these claims were not submitted to the City or County until after this case was filed. (Cf. ECF No. 1 (Complaint, filed January 7, 2021); with ECF Nos. 15-1 at ¶¶ 5-9; 15-3 at Ex. D-H (alleging notices were submitted to City and County defendants in late January and early February of 2021).) Thus, the following claims should be dismissed: Claim III (Cal. Civ. Code § 52.1 claim for denial of counsel); Claim IV (Cal. Civ. Code § 52.1 claim for denial of bail hearing); Claim V (Cal. Civ. Code § 52.1 claim for delay in arraignment); Claim VI (claim for conversion/"trespass to personal property"); and Claim XI (Cal. Gov. Code § 815.2 claim for respondeat superior and vicarious liability). (ECF No. 1 at ¶¶ 199-238 and 273-76.) This dismissal applies equally to the entity defendants as to the individual defendant officers, who are alleged to be public employees of the City and County. Cal. Gov't Code § 950.2 (requiring exhaustion for actions brought against public employees for injuries caused within the scope of their employment if such an action would be barred against her employer); see also Doyle v. Cal. Dep't of Corr. & Rehab., 2014 WL 5524452, at *8 (N.D. Cal. Oct. 31, 2014) ("In order to plead state law negligence claims against the individual CDCR defendants, plaintiff must also affirmatively plead that he has

fulfilled the exhaustion requirements of the California Tort Claims Act.”).

Further, given that plaintiff’s claims arising under state law accrued years prior, this dismissal should be with prejudice. Under California law, a cause of action accrues for purposes of the filing requirements of the Tort Claims Act on the same date a similar action against a nonpublic entity would be deemed to accrue for purposes of applying the relevant statute of limitations. John R. v. Oakland Unified Sch. Dist., 48 Cal. 3d 438, 444 (1989) (citing Cal. Gov. Code § 901). Plaintiff would have been aware of the denial of access to counsel, denial of a bail hearing, or denial of arraignment, in 2009 when the alleged deprivations occurred. See W. Shield Investigations & Sec. Consultants v. Superior Court, 82 Cal. App. 4th 935, 953 (2000) (noting that claims brought pursuant to the California Constitution may be treated as analogous to a federal claim for personal injury under Section 1983); see, e.g., Osborn v. United States, 2023 WL 3063127, at *2 (E.D. Cal. Apr. 24, 2023) (finding plaintiff’s case based on his Sixth Amendment rights to be time barred, pursuant to Cal. Civ. Pro. § 335, because he would have known of his alleged injury years prior); AmerUS Life Ins. Co. v. Bank of Am., N.A., 143 Cal. App. 4th 631, 639 (2006) (applying § 338(c)(1) in noting three-year statute of limitations for conversion, which commences upon the act of wrongfully taking property). The statute of limitations for civil rights claims under the Bane Act is two years and is three years for the tort claims against personal property (conversion/trespass to personal property). Thus, Claims III, IV, V, VI, and XI should be dismissed with prejudice.

RECOMMENDATIONS

It is HEREBY RECOMMENDED that:

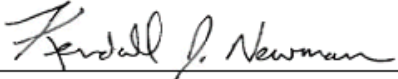
1. The stay in this case be LIFTED;
2. Defendants’ Motions to Dismiss (ECF Nos. 9, 13) be GRANTED as follows:
 - a. All claims against defendant McGinnis be dismissed with prejudice by consent of the parties;
 - b. Claims I, II, VII, VIII, IX, X, and XII be dismissed without prejudice as Heck barred;
 - c. Claims III, IV, V, VI, and XI be dismissed with prejudice for failure to notify

defendants and as time-barred; and

3. The Clerk of the Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. Section 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the court within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: February 7, 2024


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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